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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,259	06/26/2006	Motokazu Nakayama	624-46326X00	5654
20457 7590 09/02/2009 ANTONELLI, TERRY, STOUT & KRAUS, LLP 1300 NORTH SEVENTEENTH STREET SUITE 1800 ARLINGTON, VA 22209-3873				
EXAMINER LATHAM, SAEEDA MONEE				
ART UNIT 1794		PAPER NUMBER		
NOTIFICATION DATE 09/02/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/584,259

**Applicant(s)**

NAKAYAMA ET AL.

**Examiner**

Saeeda Latham

**Art Unit**

1794

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-4 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/DF)
- Paper No(s)/Mail Date 20061010 and 20090702.
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because the abstract is two paragraphs. Correction is required. See MPEP § 608.01(b).
3. The disclosure is objected to because of the following informalities: the disclosure refers to claims, which is not proper (Page 3, lines 15).

Appropriate correction is required.

4. Claim 2 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The claim recites the method according to claim 4, which is improper. The claim should depend from a previous recited claim. It would be proper if a new claim 5 depended from claim 4.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe JP 5003772 as evidenced by Shoa et al., USPN 3928633.**

7. Watanabe teaches a manufacturing method for the emulsification of soup (0001). Extraction manufacturing of gelatin is carried out by using bone, skin of an animal (0010). Shoa teaches that protein extracts of animal hide, hoof, bone are in the form of gelatin (column 5, lines 23-24). Watanabe further teaches the gelatin is processed with acid (1<sup>st</sup> gelatin) or alkali (2<sup>nd</sup> gelatin), therefore the isoelectric points are 6.5-9.0 and 4.5-5.5, respectively. The weight ratio of 1<sup>st</sup> gelatin to 2<sup>nd</sup> gelatin is 95:5 to 10:90 (0010). The mixture of the gelatins with oil and fat yield a good emulsified product. The pH of the product material is 5.3 to 7.0 (0012). If necessary a pH adjuster can be added like sodium hydroxide, acetic acid, etc (0013). The objective is to make an emulsion that when diluted the oil is distributed uniformly (0005) and reduced the formation of a separate phase of oil in soup, when water is added (0003). It would have been obvious to one having ordinary skill in the art, at the time of the invention to have made soup, as a matter of preference, selected the weight ratio of 1<sup>st</sup> gelatin to 2<sup>nd</sup> gelatin is 70:30 to 10:90 from the overlapping range, wherein the 2<sup>nd</sup> gelatin has

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pl 4.5-5.5 and adjusted the pH of the soup to yield a pH 6.0 to 7.0 from the overlapping range.

**8. Claims 4 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe JP 5003772 as evidenced by Shoat et al., USPN 3928633 in view of Fujimoto et al., USPGpub 2007/0110865.**

9. Claim 4 relates to the method for producing baitang soup. Watanabe teaches extraction manufacturing of gelatin is carried out by using bone, skin of an animal (0010) such as soup for boiled pork ribs ramen noodles (0004). Watanabe teaches various oil and fat are used as the oily ingredient (0011). The gelatin solution and oily ingredient is mixed to yield an emulsification that is uniform (0011). Shoat teaches that protein extracts of animal hide, hoof, bone are in the form of gelatin (column 5, lines 23-24). Watanabe further teaches the gelatin added has a weight ratio of 1<sup>st</sup> gelatin to 2<sup>nd</sup> gelatin is 95:5 to 10:90 (0010). The mixture of the gelatins with oil and fat yield a good emulsified product. The pH of the product material is 5.3 to 7.0 (0012). If necessary a pH adjuster can be added like sodium hydroxide, acetic acid, etc (0013). It would have been obvious to one having ordinary skill in the art, at the time of the invention to have made soup, as a matter of preference, selected the weight ratio of 1<sup>st</sup> gelatin to 2<sup>nd</sup> gelatin is 70:30 to 10:90 from the overlapping range, wherein the 2<sup>nd</sup> gelatin has pl 4.5-5.5 and adjusted the pH of the soup to yield a pH 6.0 to 7.0 from the overlapping range.

10. Watanabe does not teach separating the oily phase. Fujimoto teaches the extraction process of pork bone extract (title), wherein the liquid extract is

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obtained by solid-liquid separation (0021) and then the oil and fat generated during the extraction is separated using an apparatus that separates into three-layers (0022). It would have been obvious to one having ordinary skill in the art at the time of the invention to have extracted pork bone and removed the oil phase taught by Fujimoto's to produce Watanabe gelatin that would yield a soup that is a stable emulsion.

11. Claim 2 relates to concentrating the aqueous phase, Watanabe teaches the extraction manufacturing of gelatin is carried out by using bone, skin of an animal (0010). The gelatin may be powdered material and added to the oily ingredient (0011). In one embodiment the 1<sup>st</sup> and 2<sup>nd</sup> gelatin is dried (0026). It would have been obvious to one skilled in the art to extract gelatin, as an aqueous phase and therefore the powder (or dried) material would be the concentrated stock of gelatin.

12. Fujimoto further teaches the liquid extract can be concentrated by various means heat or vacuum concentration (0023). It would have been obvious to one having ordinary skill in the art at the time of the invention to have concentrated the liquid extract as taught by Fujimoto to produce Watanabe's solid gelatin that would be easily manufactured for dilution in an aqueous medium by a consumer.

### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saeeda Latham whose telephone number is 571-270-1154. The examiner can normally be reached on Monday to Thursday 8:00AM - 5:00PM EST.

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14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. L./  
Examiner, Art Unit 1794

/Rena L. Dye/  
Supervisory Patent Examiner, Art Unit 1794